

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ELK GROVE UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2015080481

ORDER GRANTING MOTION TO
DISMISS

On August 12, 2015, Elk Grove Unified School District filed a request for due process hearing (complaint) naming Parent on Behalf of Student. The complaint had one issue: is Elk Grove entitled to conduct assessments pursuant to the March 17, 2015 assessment plan and the April 2015 Occupational Therapy assessment plan without Parent's consent?

On September 11, 2015, Student filed a motion to dismiss this matter claiming that the Office of Administrative Hearings does not have jurisdiction because the issue, as filed by Elk Grove, concerned the enforcement of a settlement agreement. On September 16, 2015, Elk Grove filed an opposition to the motion to dismiss.

APPLICABLE LAW

Parties have the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [hereafter *Wyner*].)

This limited jurisdiction does not include jurisdiction over claims alleging a failure to comply with a settlement agreement. (*Id.* at p. 1030.) In *Wyner*, during the course of a due process hearing the parties reached a settlement agreement in which the district agreed to provide certain services. The hearing officer ordered the parties to abide by the terms of the agreement. Two years later, the student initiated another due process hearing, and raised, inter alia, six issues as to the school district's alleged failure to comply with the earlier settlement agreement. The California Special Education Hearing Office (SEHO), OAH's predecessor in hearing IDEA due process cases, found that the issues pertaining to compliance with the earlier order were beyond its jurisdiction. This ruling was upheld on appeal. The *Wyner* court held that "the proper avenue to enforce SEHO orders" was the

California Department of Education's compliance complaint procedure (Cal. Code Regs., tit. 5, § 4600, et. seq.), and that "a subsequent due process hearing was not available to address . . . alleged noncompliance with the settlement agreement and SEHO order in a prior due process hearing." (*Wyner, supra*, 223 F.3d at p. 1030.)

In *Pedraza v. Alameda Unified Sch. Dist.* (D. Cal. 2007) 2007 U.S. Dist. LEXIS 26541 the United States District Court for the Northern District of California held that OAH has jurisdiction to adjudicate claims alleging denial of a free appropriate public education as a result of a violation of a mediated settlement agreement, as opposed to "merely a breach" of the mediated settlement agreement that should be addressed by the California Department of Education's compliance complaint procedure.

DISCUSSION

Elk Grove raises one claim against Student: is Elk Grove entitled to conduct assessments pursuant to the March 17, 2015 assessment plan and the April 2015 Occupational Therapy assessment plan without Parent's consent? Elk Grove admits in the complaint that the agreement to assess Student was part of a global settlement agreement between the parties executed in March 2015. Elk Grove asserts, and Student agrees, that the assessment plans in question were signed by Parent. Elk Grove's complaint is based upon its assertion that Parent has not cooperated with the assessment process, Student denies this allegation.

Student, in his motion to dismiss, requests that Elk Grove's complaint be dismissed because the agreement to assess Student was part of a settlement between the parties. A copy of the executed settlement agreement is attached to Student's Motion to Dismiss.

The terms of the settlement agreement call for Elk Grove to conduct assessments pursuant to an assessment plan. The agreement further has Parent agreeing to work cooperatively with Elk Grove's assessors to assure timely completion of the assessments with specific terms indicating timelines for Parent to return rating scales and making Student available during school hours for the assessments. These terms form the basis for Elk Grove's claims against Student in their complaint. There was no claim raised in the complaint that any breach of the settlement agreement resulted in a denial of FAPE to Student. Therefore, Elk Grove's complaint is a request to enforce the settlement agreement. Pursuant to the authority discussed above, OAH does not have jurisdiction to entertain Elk Grove's claim.

ORDER

Student's motion to dismiss is granted and OAH Case No. 2015080841 is dismissed.
All dates are hereby vacated.

IT IS SO ORDERED.

DATE: September 17, 2015

/s/

MARGARET BROUSSARD
Presiding Administrative Law Judge
Office of Administrative Hearings